Public Prosecutor v Lin Chien Pang

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–58–92
MOKHTAR SIDIN J
19 JANUARY 1993

Criminal Procedure *— Extradition — Extraterritorial offences — Whether punishable under the laws of Malaysia — Extradition Act 1992 s 6(2)*

Evidence *— Accomplice — Corroboration*

This was an application by the public prosecutor under s 37 of the Extradition Act 1992 ('the Act') for review of the decision of the judge of the sessions court to discharge the respondent under s 19(4) of the Act. The United States government had requested the extradition of the respondent for the offence of conspiracy to import in excess of 1kg of heroin into the United States between May 1991 and 20 March 1992 and importation of in excess of 1kg of heroin into the United States on or about 13 January 1992 as an aider and abettor.

The evidence against the respondent comprised entirely of an affidavit by one Li Yong Jing ('Li'). According to the affidavit, the deponent had met the respondent several times and it was through the respondent that the deponent met one Shiao Wu with whom the deponent had some discussions about exporting heroin to the United States. It was Shiao Wu who informed the deponent of the shipment details of the heroin. The deponent passed these details on to one Ah Nam who, unknown to the deponent, was a government informer. The heroin was seized when the shipment arrived in the United States and the deponent was eventually arrested. It was after his arrest that the deponent decided to cooperate with the authorities and he informed them that the respondent was his boss. At the instigation and supervision of the DEA, the deponent agreed to telephone the respondent and the telephone conversations were taped. The conversations mentioned money to be paid and they also mentioned heroin.

The judge of the sessions court held that the respondent did not fall within the Act because the offences were extraterritorial and failed to satisfy the proviso to s 6(2) of the Act. It was an accepted fact that the respondent had not once set foot in the United States before, during or after the commission of the alleged offences. The judge was satisfied that these were extraterritorial offences and were not punishable under the laws of Malaysia as the Dangerous Drugs Act had no extraterritorial effect. The public prosecutor applied for a review of this decision and in particular on two questions of law:

(1) Are the offences alleged against the fugitive criminal extraterritorial offences?
(2) If so, are they punishable under the laws of Malaysia if they took place in corresponding circumstances outside Malaysia?

Held, dismissing the application:

(1) The first point to be considered was whether there was a prima facie case against the respondent. The only evidence against the respondent was the affidavit of Li — an accomplice and as such the evidence required corroboration. The judge found no evidence of corroboration and was of the view that it was unsafe to rely on the evidence of Li. Even if the evidence was to be accepted, there was no evidence of criminal conspiracy, aiding or abetting on the part of the respondent.

(2) The judge of the sessions court had erred in law when she held that there was evidence of conspiracy, abetting or aiding because it was against the weight of the evidence.

(3) Assuming that there was such evidence, then the judge of the sessions court was correct in considering whether the offences were extraterritorial and if so, whether the Act applied.

(4) The judge was correct in coming to the conclusion that the offences were extraterritorial. The applicant had argued that since the heroin was actually imported into the United States pursuant to the conspiracy, aiding and/or abetment thereof by the respondent, the respondent had committed the offences in the United States. This argument, was dismissed as there was no evidence to show that the heroin imported into the United States was connected to the respondent.

(5) The judge had come to the correct conclusion in respect of the second question and was correct in her decision in refusing to order the extradition of the respondent.

[Bahasa Malaysia summary

Ini adalah suatu permohonan oleh pendakwa raya di bawah s 37 Akta Ekstradisi 1992 ('Akta itu') untuk mengkaji semula keputusan hakim mahkamah sesyen untuk membebaskan penentang di bawah s 19(4) Akta itu. Kerajaan Amerika Syarikat telah meminta penyerahan balik penentang kerana kesalahan komplot untuk mengimport lebih daripada 1kg heroin ke dalam Amerika Syarikat antara Mei 1991 dan 20 Mac 1992 dan pengimportan lebih daripada 1kg heroin ke dalam Amerika Syarikat pada kira-kira pada 13 Juanuari 1992 sebagai pembantu dan subahat.

Keterangan terhadap penentang terdiri sepenuhnya dari suatu afidavit oleh Li Yong Jing. Mengikut afidavit itu, deponen telah menemui penentang beberapa kali, dan melalui penentang deponen berjumpa dengan Shiao Wu dengan mana penentang mengadakan beberapa perbincangan tentang pengeksportan heroin ke Amerika Syarikat. Shiao Wu telah memberitahu deponen butir mengenai pengiriman heroin itu. Deponen kemudian telah menyampaikan butir itu kepada Ah Nam yang, tidak diketahui oleh deponen, adalah seorang pemberi maklumat pihak kerajaan. Heroin itu dirampas apabila kiriman itu tiba di Amerika Syarikat dan deponen akhirnya ditangkap. Selepas penangkapannya, deponen membuat keputusan untuk bekerjasama

dengan pihak berkuasa dan dia memberitahu mereka bahawa penentang adalah ketuanya. Pada hasutan dan arahan DEA, deponen bersetuju untuk menelefon penentang dan perbualan telefon itu dirakamkan. Perbualan itu menyebut tentang wang yang patut dibayar dan juga menyebut heroin.

Hakim mahkamah sesyen memutuskan bahawa penentang tidak termasuk dalam Akta itu kerana kesalahan itu adalah kesalahan luar wilayah dan gagal memenuhi proviso pada s 6(2) Akta itu. Adalah fakta yang diterima bahawa penentang belum pernah sekalipun menjejak kaki di Amerika Syarikat sebelum, semasa atau selepas perbuatan kesalahan yang didakwa itu. Hakim berpuas hati bahawa terdapat kini kesalahan luar wilayah dan ianya tidak boleh dihukum di bawah undang-undang Malaysia kerana Akta Dadah Berbahaya 1952 tidak mempunyai kesan luar wilayah. Pendakwa raya memohon pengkajian semula keputusan itu dan terutamanya atas dua soalan undang-undang:

(1) Adakah kesalahan yang didakwa terhadap penjenayah pelarian itu kesalahan luar wilayah?
(2) Jika begitu, adakah mereka boleh dihukum di bawah undang-undang Malaysia jika mereka terjadi dalam keadaan yang sama di luar Malaysia?

Diputuskan, menolak permohonan itu:

(1) Perkara pertama yang harus dipertimbangkan adalah sama ada terdapat kes prima facie terhadap penentang. Satu-satunya keterangan terhadap penentang ialah afidavit Li Yong Jing — seorang rakan sejenayah dan oleh itu keterangannya memerlukan sokongan. Hakim itu tidak mendapati apa-apa keterangan sokongan dan berpendapat yang ia tidak selamat untuk bergantung pada keterangan Li Yong Jing. Walaupun keterangan itu boleh diterima, tiada keterangan komplot jenayah, bantuan atau persubahatan pada pihak penentang.
(2) Hakim mahkamah sesyen salah dalam undang-undang apabila beliau memutuskan bahawa terdapat keterangan komplot, persubahatan atau bantuan kerana ia menentang beratnya keterangan bukti.
(3) Seandainya terdapat keterangan, dengan demikian hakim mahkamah sesyen betul dalam mempertimbangkan sama ada kesalahan itu adalah kesalahan luar wilayah dan jika begitu, sama ada Akta itu terpakai.
(4) Hakim itu betul dalam membuat kesimpulan bahawa kesalahan itu adalah kesalahan luar wilayah. Pemohon telah berhujah bahawa kerana heroin itu sebenarnya telah diimport ke dalam Amerika Syarikat sesuai dengan komplot itu, bantuan dan/atau persubahatan komplot itu oleh penentang, penentang telah melakukuan kesalahan di Amerika Syarikat. Penghujahan ini telah ditolak kerana tiada keterangan menunjukkan bahawa heroin yang diimport ke dalam Amerika Syarikat itu ada kena-mengena dengan penentang.
(5) Hakim itu telah membuat kesimpulan yang betul berkenaan dengan

soalan kedua dan keputusannya enggan memerintah penyerahan balik penentang adalah betul.]

Notes

For cases on extradition, see 5 *Mallal's Digest* (4th Ed) paras 1121–1166.

For cases on the corroboration of accomplice evidence, see 7 *Mallal's Digest* (4th Ed) paras 1–54.

Cases referred to

1 *Koh Ah Chua v PP* [1948] MLJ 11 (folld)
2 *Yusoff & Anor v PP* [1956] MLJ 47 (folld)
3 *Tay Chong Beng & Anor v PP* [1963] MLJ 131 (folld)
4 *Kassim v PP* [1949] MLJ 70 (folld)
5 *Karuppiah v R* [1949] MLJ 75 (folld)
6 *Mobarik Ali Ahmad v State of Bombay* AIR 1957 SC 857 (refd)
7 *PP v Loh Ah Soo* [1974] 2 MLJ 216 (distd)
8 *Lee Szu Yui v PP* [1962] MLJ 49 (distd)
9 *PP v Yong Nam Song* [1964] MLJ 85 (distd)
10 *PP v Khoo Ban Hock & Ors* [1988] 2 MLJ 217 (refd)
11 *PP v Rajappan* [1986] 1 MLJ 152 (folld)

Legislation referred to

Extradition Act 1992 s 6

Mohd Ramli Othman (Senior Federal Counsel) for the public prosecutor.
Mohd Shafee Abdullah (*Shafee and Co*) for the respondent.

Cur Adv Vult

Mokhtar Sidin J: This is an application by the public prosecutor under s 37 of the Extradition Act 1992 ('the Act') for a review of the decision of the learned sessions court judge who had ordered the respondent to be discharged under s 19(4) of the Act. The grounds for review are contained in para 5 of the affidavit in support of the notice of motion. The affidavit dated 6 October 1992 was affirmed by one Lee Oi Kuan. Paragraph 5 reads as follows:

> Your humble applicant is dissatisfied with the said judgment, in particular with the findings or conclusions of the said judge on the two (2) questions of law set out at pages six (6) to nine (9) of exh 'LOK 1', and which questions of law are reproduced as follows:
>
> (1) Are the offences alleged against the fugitive criminal extraterritorial offences?
> (2) If so, are they punishable under the laws of Malaysia if they took place in corresponding circumstances outside Malaysia?

The offences for which the United States government requested the respondent to be extradited are as follows:

Count One: Conspiracy to import in excess of one (1) kg of heroin into the United States between May 1991 and 20 March 1992 in violation of Title 21, United States Code, ss 952(a), 960(a)(1), 960(b)(1)(A) and 963; Title 18, United States Code, s 3551 et seq.

Count Two: Importation of in excess of one kg of heroin into the United States on or about 13 January 1992 as an aider and abettor, in violation of Title 21, United States Code, ss 952(a), 960(a)(1) and 960(b)(1)(A); Title 18, United States Code, ss 2 and 3551 et seq.

It was contended by the applicant that the facts as tendered before the sessions court were that heroin was actually imported into the US pursuant:

(i) to a conspiracy; and
(ii) aiding or abetting by the fugitive criminal. It was also contended by the applicant that those offences were committed in the US even though the respondent was never physically present in the US at the material time. With that it appears to me that the applicant conceded that the learned sessions court judge was correct when she stated that it was an undisputed fact that the respondent never set foot in the United States.

Before proceeding further it is better for me to set out the relevant facts as presented by the applicant. It is clear to me that the evidence against the respondent rests entirely on the evidence of one Li Yong Jing ('Li') in the form of an affidavit which was marked as exh F. In that affidavit, Li stated that he first met the respondent in August 1990 when one person called 'Ah Chai' introduced the respondent to him. The meeting was at a nightclub in Bangkok. There were casual talks between them and nothing more. Li then went back to New York. While in New York the said Li met one 'Ah Nam' who was a government informer. At that time the said Li did not know Ah Nam was a government informer. The said Ah Nam informed Li that he had a company called 'The Far East Trading Co'. The said Ah Nam also told Li that he had the means to distribute heroin. Because of that the said Li went back to Bangkok and arrived there some time in *May 1991*. While in Bangkok he met the respondent several times and he was introduced by the respondent to a person by the name of Shiao Wu. According to Li he had some discussions about exporting heroin to the USA but it appears from the affidavit that nothing concrete materialized. The said Li admitted that he had discussed the possibility of exporting heroin to the US with Ah Chai despite the warning by Shiao Wu not to do so and this confirms my view that the discussion with the respondent about the exportation of heroin to the US had not materialized. From that it appears to me that the said Li was shopping for heroin to be exported to the US. Sometime in June or July 1991, the respondent informed the said Li that the heroin had been loaded but refused to tell Li where the heroin was located. After that, the said Li left for China. Sometime in August or September 1991, the said Li was asked through the phone by Shiao Wu to return to Hong Kong. He also requested Li to ask Ah Nam to come to Hong Kong.

In Hong Kong, Shiao Wu told Li Yong Jing that the heroin had been shipped from Singapore. Shiao Wu also informed Li that the heroin was

hidden in wooden crates that contained porcelain Chinese vases. According to Li, he was also shown by the said Shiao Wu photographs of the crates. Sometime on 14 September 1991, the said Li met Ah Nam and another person in Hong Kong where the said Li showed them the same photographs. From this it appears to me that the photographs were in the possession of Li but these photographs were never produced to confirmed the story. Li also showed them the invoices for the shipment which according to Li were handed to him by Shiao Wu. This is the first piece of evidence of conspiracy (if any) between Li and Shiao Wu. It was clear from the evidence that the respondent was never there. Later, while Li was in Hong Kong he met Shiao Wu who informed him that the amount of heroin was much less than the original amount told to him by Shiao Wu. Li in turn informed Ah Nam of this on 17 September 1991. This evidence to me is important because it tends to show that all the parties were in Hong Kong when they knew of the actual amount of heroin exported to the US. When the said Ah Nam asked for confirmation of the shipment, the said Li told him the shipment documents had been forwarded to the office in Bangkok to be forwarded to the office of Far East Trading in New York. There is no evidence to show that the office in Bangkok belonged to the respondent. The said Li then left for China. On 8 October 1991, while in China, Li rang up Ah Nam in New York inquiring whether he had received the fax in New York and Ah Nam confirmed it.

On or about 10 January 1992, Li telephoned Ah Nam in New York inquiring about the heroin shipment and also informed Ah Nam that he was in Hong Kong and gave him his phone number. According to the DEA, sometime on 13 January 1992, the carrier carrying the heroin arrived at the port of New York and New Jersey. The United States Customs seized the crates and eventually found the heroin. Sometime on 16 January 1992, Ah Nam telephoned Li and asked him to come to New York to collect the money instead of sending it to Hong Kong. On 23 January 1992, Li called Ah Nam and told him that he was in New York to accept the payment. Ah Nam and another undercover agent of the DEA then met Li in New York's Chinatown where according to Ah Nam, Li told him that he worked for a Chinese boss in Thailand, but no name was ever mentioned. Sometime on 27 January 1992, Li met Ah Nam and the other undercover agent again at a restaurant when Li was arrested when the sum of US$2m was to be paid to him.

It is clear from the evidence that only after his arrest did the said Li agree to tell the DEA about his connections with the heroin seized and it appears that only then did he name the respondent as his boss. According to the documents forwarded to the court below it was only after the arrest that Li agreed to cooperate with the United States authorities. Due to this cooperation and at the instigation and supervision of the DEA, Li allegedly agreed to telephone the respondent and the telephone conversations were taped. Altogether there were six telephone conversations purportedly between Li and the respondent. Five of them were made from New York to Bangkok and the last one was made from New York to Kuala Lumpur. All the conversations were in respect of money to be paid and they also mentioned some heroin. Those were the facts that are relevant to the present case.

The first question for me to consider though not raised by parties, is whether there was actually a conspiracy, aiding or abetting on the part of the respondent. To me this is important before one could proceed to the next question whether the offence in question is extraterritorial or otherwise. In my opinion, it is the duty of the applicant to establish that the respondent did commit one or all of the above offences. If there is no such offences being established then the necessity to consider extraterritoriality or otherwise will not arise.

For the purposes of extradition, it must be an extradition offence as defined in s 6 of the Act. Section 6 provides as follows:

> (1) A fugitive criminal shall only be returned for an extradition offence.
> (2) For the purposes of this Act, *an extradition offence is an offence*, however described, including fiscal offences —
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> (a) which is punishable, under the laws of a country referred to under paragraph 1(2)(a) or 1(2)(b), with imprisonment for not less than one year or with death; and
> (b) which, if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than one year or with death:
>
> Provided that, in the case of an extraterritorial offence, it is so punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia.
> (3) *An offence shall also be an extradition offence if it consists of an attempt or a conspiracy to commit, or an abetment of the commission of, any offence described in subsection (2).* (Emphasis added.)

It is obvious to me that the offences upon which the request was made by the United States government falls within para (3) of s 6. It is not disputed that the importation of drugs including heroin is an offence in Malaysia where the punishment is not less than a year.

Now let me turn to the question whether the offences for which the request for extradiction was made if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than a year or with death. First of all it must be established that the offences as alleged by the United States government are offences in Malaysia. When I said offences, there must be evidence of a prima facie case otherwise there are no offences for which a person could be extradited. For that purpose I must examine the evidence in the light of Malaysian laws including whether the evidence is admissible under Malaysian laws. It is in this light I have to view the evidence given by the United States government as I have stated earlier. To me that is the requirement under s 6(2) of the Extradiction Act 1992. To me it is no good for the requesting state, which is in this case the United States, merely to say that the fugitive criminal had committed an offence or offences in the US and thereby the requested state, which is in this case Malaysia, must accept that an offence or offences had been committed.

It appears from the evidence that only one person by the name of Li is said to have met the respondent. As I could see, the only evidence available against the respondent is the evidence of Li. It is clear the evidence given by

A him was by way of an affidavit. It is also clear from the evidence that when the affidavit was sworn the said Li had been arrested for the importation of heroin which is the subject matter of the offence or offences of which the respondent was accused of. With that I am of the view that the said Li is a co-accused or at the very best an accomplice. Our law is clear as to the
B treatment of evidence of such a person. There is no doubt in my mind that the affidavit is a self-implicating statement which in my view tantamounts to a confession. It is to be noted that the affidavit was not subjected to cross-examination. In this respect I would like to refer to the case of *Koh Ah Chua v PP*[1] where it was held as follows:

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> ... although the court may take into consideration the confession of a co-accused duly made before a magistrate and proved at the trial, its weight is slight. Not being made on oath or subject to cross-examination, it is of even lesser weight than the evidence of an accomplice. A person making such a confession usually attributes the chief blame to others. Such evidence is not ordinarily sufficient without corroboration.

D In another case, *Yusoff & Anor v PP*,[2] where there was an appeal against the conviction of the appellant for the murder of an unknown Malay woman, the prosecution case depended almost entirely on a confession made by the second appellant to a magistrate. That confession laid the entire blame for the killing on the first appellant. When brought before the magistrate, the second appellant told the magistrate that he decided to tell the truth as his
E wife would be kept in the trouble by his being detained. It was held that:

> (1) As there was a suggestion that there was a motive other than the desire to tell the whole truth in the mind of the second appellant when he made his confession and as it appeared that certain statements in the confession could not be true, it was necessary for the trial judge to examine the question
F whether the confession was voluntary and whether its contents bore the stamp of truth;
> (2) even accepting the confession of the second appellant as being both voluntary and true, such a confession alone was insufficient upon which to base the conviction of the first appellant.

G Even treating the evidence of Li to be evidence of an accomplice which I am inclined to do, there must be corroboration of his evidence by independent witnesses. As could be seen from the charges they are offences of conspiracy, aiding or abetting, another person other than the respondent must exist in order to commit those offences. From the evidence it is clear to me that the other person was Li. It was clear from the evidence that the
H importation of the heroin into the US was at the instigation of Li. It was Li (if any) who asked the respondent to export the heroin to the US and it was also Li who went to New York to look for a syndicate to accept the consignment. As such it is clear to me that the said Li was an accomplice. What is the status of an accomplice's evidence? There are numerous
I authorities in Malaysia in respect of this. I would like to refer to the case of *Tay Chong Beng & Anor v PP*[3] where it was held:

> Where accomplice evidence is given, the judge must warn himself that this evidence must be treated with great caution, and that there is necessity *for corroboration in a material particular implicating the accused.* (Emphasis added.)

What is meant by corroboration? This is clearly stated in two cases: A

(1) *Kassim v PP*[4] where it was stated as follows:

> ... that the corroboration that is required where the evidence is that of an accomplice, need not necessarily give independent support to every factor of the case against the accused and it is sufficient if the corroboration corroborates B some material part of the accomplice's story which identifies both him and the accused person with the offence charged and goes towards the identity of the accused person.

(2) *Karuppiah v R*[5] where it was held as follows:

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> (1) that one accomplice cannot corroborate another; (2) that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime; (3) that the learned district judge had in this case accepted evidence, circumstantial and otherwise, as corroborative which was not, in law, corroborative evidence and therefore the conviction must be quashed.

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In my opinion, the position is the same in respect of a confession of a co-accused and evidence of an accomplice in countries applying the common law in order for it to be relied on in any court.

Corroboration required in the present case is in respect of evidence of conspiracy, aiding or abetting in the importation of heroin into the United E States. It is clear from the evidence that the respondent never stepped foot on the United States or Hong Kong. As such I have to view the offence of conspiracy, abetting or aiding in the light of what actually happened in Thailand. The only evidence adduced before the lower court was the affidavit of Li. Is there any evidence to corroborate that affidavit? I find there is no evidence by any person whether by way of affidavit or otherwise F who could confirm the meeting that took place between the said Li and the respondent in Bangkok. As such there is no independent witness to confirm what actually transpired between them to show what actually took place between the two of them. There is no independent evidence to show that what had been said by Li was true. The applicant relied on the fact that the G heroin had landed in New York and was seized by the Customs there as a basis for corroboration. With the greatest respect there is nothing to show that the heroin in fact originated from the respondent. At the most there was only an inference that it originated from the respondent. To me, the heroin originated from Shiao Wu. Another fact relied on by the applicant to show there was corroboration was the six telephone conversations purport- H edly to be between Li and the respondent. First of all, there is no evidence whatsoever that the person on the other end of the line was the respondent. It was Li all that time who made the assertions that the other side was the respondent. Taking into consideration the number of times the two had made contact, was there sufficient evidence to show that Li could positively I identify the voice of the respondent? Secondly, I have gone through the transcripts of the taped conversations and I could not find any evidence to show that the heroin seized by the Customs was the heroin sent by the respondent. Most of the time they were talking about money collections.

A From the above I could not find any corroboration on the affidavit of Li. As such I am of the view that it is unsafe to rely on the evidence of Li to prove the offences against the respondent.

Even assuming that the affidavit of Li is to be accepted in toto is there any evidence in the affidavit to show that there was a conspiracy between Li and the respondent? From the affidavit, there was evidence to show that there were meetings that took place between the two of them. From the affidavit it could not be denied that there was some discussions about heroin. It appears to me that the discussions were mostly one-sided which was on the part of Li. It was Li who suggested the exportation of heroin to the US. It appears that Li only showed interest but there was no indication that he agreed to the proposal. What I meant by interest was when he suggested to Li to have a syndicate in New York to accept the consignment and distribute the heroin. On that basis the said Li went back to New York where he met Ah Nam who informed him that he had a company in New York to accept the consignment and to distribute the heroin. With that, Li went back to Bangkok where he purportedly met the respondent and informed him of the arrangement. It appears from the affidavit he did not agree or commit to do anything. He was more or less passive. Subsequently he informed the said Li that there was some heroin being loaded in a ship. There is no evidence whatsoever as I have said earlier that the heroin was the same one seized by the Customs. From then onwards the respondent disappeared from the scene to be replaced by Shiao Wu who, it appears to me from the affidavit, played an active part in the negotiations with Li on the exportation of heroin and the collection. Though the applicant tried to infer that Shiao Wu was working for the respondent, there is no evidence to support it. From this it appears to me the negotiations and the actual exportation of heroin to the US (if any) were between Li and the said Shiao Wu. It appears to me that it was Shiao Wu who made all the arrangements and gave all the instructions. It appears from the affidavit that Shiao Wu was acting on his own. As such I could not find any evidence of criminal conspiracy, aiding or abetting on the part of the respondent. As to the telephone conversations, they were in respect of money collection and some heroin but there was nothing to show that the heroin mentioned was the one seized by the Customs.

For the above reasons, I am of the view that the learned sessions court judge had erred in law when she held that there was evidence of conspiracy, abetting or aiding because it was against the weight of evidence. For this reason I am of the view that the respondent had not committed any offence.

Assuming that there was evidence of conspiracy, aiding or abetting, as found by the learned sessions court judge, in my view she was correct in considering whether the offences were extraterritorial. If they are so, does the Act apply? In respect of this the learned sessions court judge in her judgment stated as follows:

However, there is inserted a proviso to s 6(2) which says:

> 'Provided that in the case of an extraterritorial offence, it is as punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia.'

The questions before the court now are: A

(1) is this an extraterritorial offence; and
(2) if so, is it punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia?

It is evidenced before the court that this is an extraterritorial offence. It is an undisputed fact the fugitive criminal has never set foot in the United States B before, during or after the commission of the alleged offences. He had all the time been based in Bangkok and had come to Kuala Lumpur, to receive the proceeds of the sale of shipment of heroin. ...

It may be that the fugitive criminal had committed an offence or offences punishable under the laws of the United States, but after carefully considering the provisions of s 6 of the Extradition Act, I am of the view that the offences C committed by him against the United States, is not punishable under the laws of Malaysia since the second limb of s 6(2b) is not satisfied. The Dangerous Drugs Act having no extraterritorial effect, offences under it if committed outside the jurisdiction of Malaysia, is not punishable under the laws of this country. As such the offences committed by the fugitive criminal are not extradiction offences under the Extradition Act 1992. D

The applicant contended that those offences were not extraterritorial offences as found by the learned sessions court judge. It was submitted that since the heroin was actually imported into the United States pursuant to the conspiracy, aiding and/or abetment thereof by the respondent, the respondent had committed the offences in the US. To support this the E applicant cited the case of *Mobarik Ali Ahmad v State of Bombay*.[6] In that case it is clear to me that the evidence shows that the offence of cheating under s 420 of the Penal Code was partly carried out in Karachi and partly in Bombay. Without the representation being made in Bombay it appears there would be no offence being committed at all. This is clear from the F facts of the case. In the present case there is no evidence to show that the heroin which landed in New York was the same heroin that the respondent and Li conspired to take into the United States. The only evidence before the court was that there was some heroin which landed in New York but there was no evidence that the heroin came from the respondent or that it was the same heroin that the respondent and Li conspired to import into G the US. Though there could be an inference, in my view the inference is a very weak one and without any supporting evidence I could not come to the conclusion as submitted by the applicant. It could well be the heroin was from someone other than the respondent or somewhere else. This is the same with the telephone conversations. Though the conversations mentioned money and heroin, I could not find any evidence to show that the H heroin was the same one which both the respondent and Li conspired, aided or abetted to be imported into the US. There is also no evidence to show that the money collection mentioned in the telephone conversations was in respect of the same heroin.

In addition to the case of *Mobarik Ali Ahmad*,[6] the applicant also cited I the case of *PP v Loh Ah Soo*;[7] *Lee Szu Yui v PP*[8] and *PP v Yong Nam Song*[9] to support his contention. In my view in those cases, there were clear evidence to show that the accused persons in those cases were the people who had signed the declaration forms which were used to commit the

offences. Thus those cases could be easily distinguished from the present case. The applicant also referred to the case of *PP v Khoo Ban Hock & Ors.*[10] I agree with the learned defence counsel for the respondent that the facts stated in that case were insufficient in order for me to make any ruling that the principle in that case could be applied in the present case.

The question whether the offence is extraterritorial or otherwise had been discussed at great length in the case of *PP v Rajappan.*[11] This was a decision of the Supreme Court consisting of five judges which appears to me to be a very strong panel. The accused in that case was charged for bigamy when he married another woman in India when the first marriage was still subsisting. The accused then brought the wife of the second marriage to Malaysia and lived with her. It appears that the bigamous marriage continued in Malaysia. The Supreme Court held that the court in Malaysia had no jurisdiction to try the accused since the second marriage took place outside Malaysia.

For the above reasons I agree that the learned sessions court judge was correct in holding that the offences were extraterritorial in nature. She had come to the correct conclusion.

The case of *PP v Rajappan*[11] also dealt at great length with the second question posed by the applicant. There is no necessity for me to repeat them. It is sufficient for me to say the learned sessions court judge had applied the principles correctly in the present case. I agree with the conclusion made by the learned sessions court judge. Her decision in respect of this is hereby confirmed and she was right in her decision in refusing to order the extradition of the respondent.

I therefore dismissed the application by the applicant.

Application dismissed.

Reported by Wong Kim Fatt